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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 504

MARIE AND ALEX MANOOGIAN FUND,
d/b/a Metal Parts Manufacturing Company,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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vs.
UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

William Coit Allee on behalf of Marie and Alex Manoogian Fund, d/b/a Metals Parts Manufacturing Company, Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Sixth Circuit entered in the above case on May 4, 1956.

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 5-13) is reported at 24 T. C. No. 46. The opinion of the Court of Appeals for the Sixth Circuit filed May 4, 1956, and amended by order filed July 23, 1956, is reported at 232 F. (2d) 758. Copies of said opinion and amendment are set forth in the appendix at pp. 6a-14a.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was made and entered May 4, 1956 (R. 48) and petition for rehearing made by Petitioner was denied July 23, 1956 (R. 77). Petitioner's petition for reconsideration of the petition for rehearing was denied by the Court on September 7, 1956 (R. 88). Copies of the opinion of the Court dated May 4, 1956, and of the order modifying said opinion dated July 23, 1956, are appended to this petition in the Appendix at pp. 6a-14a. The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1).

QUESTION PRESENTED

The Petitioner instituted proceedings in the Court of Appeals for the Sixth Circuit to review a decision of the Tax Court holding that the war contracts of Petitioner were not absolved from renegotiation under the Renegotiation Act of 1943, as amended. The Court of Appeals granted Respondent's motion to dismiss the petition for review on the grounds that venue for review does not lie in the Court of Appeals for the Sixth Circuit but only in the Court of Appeals for the District of Columbia. The question presented is whether venue for review of the Tax Court's decision in the instant case is in the Court of Appeals for the Sixth Circuit.

STATUTES INVOLVED

The pertinent portions of the Renegotiation Act of 1943, as amended, 50 U. S. C. App. 1191(e)(1), the Internal Revenue Code of 1939, 26 U. S. C. 1141, the Internal Revenue Code of 1954, 26 U. S. C. 7482, and the Renegotiation Act of 1951, 50 U. S. C. App. 1218, are set forth in the Appendix at pp. 1a-5a. The pertinent provision of the Renegotiation Amendments Act of 1956 is set forth in this petition *infra* at p. 9.

STATEMENT

The Petitioner herein, having been advised by the War Contracts Price Adjustment Board that under the Renegotiation Act of 1943, it realized excessive profits in the total amount of $225,000.00 for 1944 and 1945, petitioned for a re-determination of the Board's findings in the Tax Court under section 403(e)(1) of said act.

The Tax Court entered decisions against Petitioner determining excessive profits in the amounts previously determined by the War Contracts Price Adjustment Board (R. 14-15).

Timely petitions for review of the decisions of the Tax Court were filed with the Court of Appeals for the Sixth Circuit (R. 16, 18).

Before perfection of said appeal, the Respondent filed a motion to docket and dismiss the petition for review on the grounds of lack of venue (R. 23).

On May 4, 1956, the Court of Appeals granted Respondent's motion to docket and dismiss the petitions for review (R. 47). A written opinion of the Court's decision was issued on the same day (R. 48).

Petitioner filed a timely petition for re-hearing (R. 50) which was denied by the Court by order dated July 23, 1956 (R. 77). On the same date an order of the Court was filed amending its opinion dated May 4, 1956 (R. 76).

Petitioner filed a petition for reconsideration of its petition for re-hearing on or about August 6, 1956 (R. 79-80). Said petition was denied by order of the Court filed September 7, 1956 (R. 88).

REASONS FOR GRANTING THE WRIT

It is respectfully submitted that this petition for writ of certiorari should be granted because the decision of which review is sought holds: (a) that prior to the enactment of the Renegotiation Amendments Act of 1956, venue for review of Tax Court renegotiation decisions was solely in the Court of Appeals for the District of Columbia, and, (b) that even subsequent to the enactment of said statute, venue for review of Tax Court renegotiation decisions rendered under the 1943 Renegotiation Act continued to be solely in the Court of Appeals for the District of Columbia. In the first instance, the decision is in clear conflict with the decision of this Court in *U. S. v. California Eastern Line, Inc.*, 348 U. S. 351. In the second instance, the decision is in direct conflict with several decisions of this Court and of other Courts of Appeals regarding the retroactivity of procedural statutes, and subverts the Congressional purpose in enacting a remedial statute.

The effect of the conflicts created in both instances will be widespread and will involve numerous present and future litigants. Accordingly, it is urged that this petition should be granted and this Court should resolve the legal ambiguities now existing.

The two conflicts of law created by the decision of which review is sought will be considered separately below. In each instance a comparison between such decision and the decisions of this Court and other Courts of Appeals on the same legal point will be made to demonstrate the conflicts now created.

I.

On May 4, 1956, the Court of Appeals for the Sixth Circuit granted Respondent's motion to dismiss the proceedings pending before it. Such proceedings constituted an appeal from a decision of the Tax Court of the United States involving a jurisdictional question under the Renegotiation Act of 1943. The basis for the dismissal was succinctly stated in the opinion, as follows:

> "Our determination rests upon venue: Venue for review of the Tax Court's decision in the instant case is not, as heretofore stated, in this court, but in the United States Court of Appeals for the District of Columbia."

The conclusion of the Court of Appeals for the Sixth Circuit that venue for review of Tax Court decisions in renegotiation matters is limited to the Court of Appeals for the District of Columbia is, it is submitted, in direct conflict with the decision of this Court in *U. S. v. California Eastern Line, Inc., supra,* affirming the decision of the Court of Appeals for the District of Columbia in *Chairman of U. S. Maritime Commission v. California Eastern Line, Inc.,* 204 F. (2d) 398.

In the *California Eastern Line* case, *supra,* the Court of Appeals for the District of Columbia held that the Tax Court, "has been consistently held to be not a court, but 'an executive or administrative board'" (p. 401), and that

such an agency cannot finally determine the extent of its own jurisdiction. The Court concluded therefore that on questions of jurisdiction or constitutionality, as opposed to questions of the amount of excessive profits, an appeal from the Tax Court in renegotiation matters would lie. This conclusion was in direct conflict with the earlier decision of the Court of Appeals for the Ninth Circuit in *French v. War Contracts Price Adjustment Board,* 182 F. (2d) 560. Recognizing the importance of this question to numerous contractors with large sums at stake, this Court granted certiorari in the *California Eastern Line* case. In its opinion, this Court reviewed the provisions of Section 1141 of the Internal Revenue Code of 1939, relied upon by the Court of Appeals for the District of Columbia as the basis for its conclusion that an appeal would lie from a Tax Court renegotiation decision, and said:

> "The language of §1141 is broad enough to justify review of Tax Court renegotiation orders. And we cannot say that because the section was originally passed primarily to authorize review of decisions on revenue matters it should be held inapplicable to decisions on other justiciable matters entrusted to the Tax Court by Congress" (pp. 353-4).

This Court therefore affirmed the decision of the Court of Appeals for the District of Columbia, on the ground that while Section 1141 was originally designed to apply to "decisions on revenue matters", it is also applicable to Tax Court decisions in renegotiation matters. The Court established the principle that Tax Court renegotiation decisions are as fully reviewable by Courts of Appeals under Section 1141 as are Tax Court decisions on revenue matters, subject to the single condition that review is limited to constitutional or jurisdictional issues.

The present decision of the Court of Appeals for the Sixth Circuit is in conflict with this holding, because it is predicated upon the narrow reading of Section 1141[1] which this Court repudiated in the *California Eastern Line* case. The conclusion of the Court of Appeals for the Sixth Circuit is that because in renegotiation matters there is no "return" with respect to which a "liability arises", no "taxpayer", no "Commissioner" and no "collector", Section 1141 is to be limited to revenue matters and under its terms review of a renegotiation decision can be had only in the Court of Appeals for the District of Columbia. The Court of Appeals for the Sixth Circuit is thus imposing an additional limitation upon Section 1141, beyond the single limitation which this Court and the Court of Appeals for the District of Columbia has held exists, namely, that the review need only involve constitutional or jurisdictional issues.

In summary, the decision of this Court, affirming the decision of the Court of Appeals for the District of Columbia in the *California Eastern Line* case, stands for the proposition that Section 1141 is as fully applicable to renegotiation appeals as it is to revenue appeals, as long as jurisdictional or constitutional questions are presented. An appeal from the Tax Court can thus be taken under Section 1141 in a renegotiation case, provided such questions are involved, to either the Court of Appeals for the District of Columbia or to the Court of Appeals in which the renegotiated contractor is situated. The decision of the Court of Appeals for the Sixth Circuit is that there must not only be jurisdictional or constitutional questions presented, but the

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[1] Section 1141 of the Internal Revenue Code of 1939 was re-enacted as Section 7482 of the Internal Revenue Code of 1954 with no material change (App. 5a).

appeal can only be taken to the Court of Appeals for the District of Columbia.

The renegotiation of government contracts has been sanctioned as a matter of necessity in periods of national stress. It is in the nature of an emergency measure, and its great impact upon the nation's economy is clear. Because of its extraordinary character and widespread effect, the rules by which it is practiced should be completely clear, and the individual hardships resulting from it should be minimized to the greatest extent consistent with the national welfare. This Court has in the past indicated its support of these principles by hearing a number of renegotiation cases.[2] The decision of which review is here sought confuses the rules by which renegotiation is practiced in that it conflicts with the determination of this Court as to the scope of judicial review. The decision further increases individual hardships resulting from renegotiation by forcing contractors across the nation to seek review only in the District of Columbia.[3] It is respectfully submitted that this Court should exercise its jurisdiction to clarify the confusion created by the decision of the Court of Appeals for the Sixth Circuit, and to remove the burdens placed by that court upon litigants in renegotiation cases.

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[2] For example: *Lichter v. U. S.*, *Pownell v. U. S.*, *Alexander Wool Combing Co. v. U. S.*, 334 U. S. 742; *Macauley v. Waterman SS. Co.*, 327 U. S. 540; *Aircraft & Diesel Equipment Corp. v. Hirsch, et al.*, 331 U. S. 752; *Defense Supplies Corporation, et al. v. Lawrence Warehouse Co., et al.*, 336 U. S. 631; *Yakus v. U. S.*, 321 U. S. 414; *Wade v. Stimson*, 331 U. S. 793.

[3] In this connection, Congress has sought to alleviate the hardship imposed upon contractors located at great distances from the District of Columbia. See the Congressional Committee Reports, quoted at p. 12, *infra*.

II.

In presenting to the Court of Appeals for the Sixth Circuits its Petition for Reconsideration of the Petition for Re-Hearing, the Petitioner directed the attention of the Court to the fact that by Congressional action subsequent to the date of its decision, the venue question in renegotiation matters had been resolved in exactly the manner in which the Petitioner urges that it should be resolved. The Renegotiation Amendments Act of 1956 (H. R. 11947) was enacted by Congress on July 21, 1956, and signed by the President on August 1, 1956. Section 12 of this enactment provides:

> "Sec. 12. Such Act is amended by inserting after section 108 a new section as follows:
>
> 'Sec. 108A. VENUE OF APPEALS FROM TAX COURT DECISIONS IN RENEGOTIATION CASES.
>
> 'A decision of the Tax Court of the United States under section 108 of this Act may, to the extent subject to review, be reviewed by—
>
> '(1) The United States Court of Appeals for the circuit in which is located the office to which the contractor or subcontractor made his Federal income-tax return for the taxable year which corresponds to the fiscal year with respect to which such decision of the Tax Court was made, or if no such return was made for such taxable year, then by the United States Court of Appeals for the District of Columbia, or
>
> '(2) any United States Court of Appeals designated by the Attorney General and the contractor or subcontractor by stipulation in writing'."

The denial of the Petition for Reconsideration of the Petition for Re-Hearing by the Court of Appeals for the

Sixth Circuit did not set forth the basis for the Court's decision, but the action of the court could have been predicated upon only one or both of the following determinations:

(1) The statutory amendment contained no specific provision as to retroactivity, and since it was signed by the President on August 1, 1956, it did not affect the Court's decision in the present matter, dated May 4, 1956.

(2) The statutory amendment refers specifically to decisions of the Tax Court under Section 108 of the Renegotiation Act of 1951, and has no application to decisions under Section 403 of the Renegotiation Act of 1943.

If the decision of the Court of Appeals for the Sixth Circuit is predicated upon the first of the foregoing determinations, the decision creates a serious conflict with decisions of this Court and of Courts of Appeals for other circuits, which conflict will have far-reaching effects.

The statute in question is procedural in nature. Under well-defined principles of law laid down by this Court,[4] several Courts of Appeals,[5] and various Federal District Courts,[6] statutes or amendments pertaining to procedure

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[4] *Campbell v. Holt*, 115 U. S. 620, *Danzer Co. v. Gulf R. R.*, 268 U. S. 633.

[5] *Dargel v. Henderson*, 200 F. (2d) 564 (Emer. Ct. of App.); *Home Loan Bank Board v. Mallonee*, 196 F. (2d) 336 (9th Circuit); *Beatty v. U. S.*, 191 F. (2d) 317 (8th Circuit); *In re Monsen*, 74 F. (2d) 411 (7th Circuit, cert. den. 294 U. S. 729); *Link v. Receivers of Seaboard Air Line Ry. Co.*, 73 F. (2d) 149 (4th Circuit).

[6] *U. S. v. National City Lines*, 80 F. Supp. 734; *Hadlich v. American Mail Line*, 82 F. Supp. 562; *Hayes v. Chicago, Rock Island and Pacific R. R.*, 79 F. Supp. 821; *Nunn v. Chicago, Milwaukee, St. P. & P. R. Co.*, 80 F. Supp. 745, and *Perry v. Atchison, T. & S. F. Ry. Co.*, 82 F. Supp. 912.

operate retroactively and, in the absence of a savings clause to the contrary, apply to all cases then pending. Matters of venue and changes in provisions relating to venue have been held incidences of procedure.[7] A case on appeal to a United States Court of Appeals is considered a "pending case", affected by amendments to procedural statutes.[8]

At the time the above Bill was signed into law, proceedings before the Court of Appeals for the Sixth Circuit had not been completed. The mandate of the Court had not issued, and Petitioner's motion for reconsideration was under consideration by the appellate court. The decisions of the Fourth, Fifth, Seventh, Eighth and Ninth Circuits in the cases cited in footnotes 5 and 8 and the principles laid down by this Court in decisions cited in footnotes 4 and 7 clearly make the venue modification in the Renegotiation Act applicable to Petitioner's appeal. Denial of the petitions for review by the Sixth Circuit Court is in direct conflict with decisions of this Court and with decisions of these other circuits.

If the decision of the Court of Appeals for the Sixth Circuit is predicated upon the second of the foregoing determinations, the decision involves a serious mis-interpretation of Congressional intent, and constitutes a misapplication of a statute to the grave detriment of a number of litigants. In enacting the statutory provision, Congress clearly hoped to clarify a doubtful aspect of law. The report of the House Committee on Ways and Means relating to the statute in question states on page 25 thereof:

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[7] *Ex Parte Collett*, 337 U. S. 55; *Kilpatrick v. Texas & Pacific Ry. Co.*, 337 U. S. 75; *U. S. v. National City Lines*, 337 U. S. 78. See also cases cited in footnote 6.

[8] *Bowles v. Strickland*, 151 F. (2d) 419 (5th Circuit).

"Court decisions under present law indicate that where a decision of the Tax Court in a renegotiation case is reviewable, an appeal may be taken only to the United States Court of Appeals for the District of Columbia".[9] As of June 30, 1956, when the House Report was submitted to the Committee of the Whole House, as far as Petitioner knows only two cases, both decided by the Sixth Circuit Court, had any direct bearing on the venue question: *Ebco Manufacturing Co. v. Secretary of Commerce,* 221 F. (2d) 902, and the present proceedings. Both of these cases involved renegotiation orders issued and appealed from under the 1943 Act. Yet the House Report states that the purpose of the new amendment is to remedy the situation which arose in the *Ebco* case and in the present proceedings, saying: "Under present law and court decisions the contractor can obtain review only by the United States Court of Appeals for the District of Columbia, which your Committee believes causes unnecessary expense and travel for contractors located a considerable distance away from Washington" (p. 10).

It is difficult to assume that Congress, in seeking to grant relief in cases of renegotiation appeals intended to withhold relief from the very litigants whose cases brought the matter to Congressional attention. Yet such is the result of the appellate court's decision. It is contended that Congress intended to grant relief to appellants whether their cases arose under the 1943 Act or the 1951 Act, the provisions of which in all respects here pertinent are identical.[10]

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[9] H. R. No. 2549, 84th Congress, 2nd Session.

[10] Section 108 of the 1951 Act and Section 403(e)(1) of the 1943 Act are set forth in the Appendix at pp. 1a-3a.

As the law stands, contractors seeking a review of the Tax Court's decisions in renegotiation matters under the 1943 Act will be caught in a web of uncertainty as to the proper forum for appeal, the very thing Congress sought to alleviate. If, in reliance upon the decision of this Court in the *California Eastern Line* case, *supra*, and upon the expressed intention of Congress, contractors seek review in Courts of Appeals for their own circuits, they may find themselves deprived for all time of a forum in which to seek review through the application of the rule of the Court of Appeals for the Sixth Circuit in the present case. Clear and unambiguous application of a remedial statute of potentially wide application is, Petitioner believes, an important federal question. It is significant enough for this Court to resolve the doubt surrounding the statute once and for all.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

RENEGOTIATION ACT OF 1943, AS AMENDED

Section 403(c)(1):

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor, may, within ninety days (not counting Sundays or a legal holiday in the District of Columbia as the last day) after the mailing of the notice of such order under subsection (c)(1), file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before The Tax Court of the United States to finally determine the amount, if any, of excessive profits, shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding *de novo*. For the purposes of this subsection the court shall have the same powers and duties, insofar as applicable, in respect of the contractor, the subcontractor, the Board and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by The Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such

court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board or Secretary, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board or Department available for that purpose, and in the case of any other witnesses, shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this subsection shall not operate to stay the execution of the order of the Board under subsection (c)(2).

RENEGOTIATION ACT OF 1951

Section 108. Review by The Tax Court.

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may—

(a) if the case was conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 105 (a) of the notice of such order, or

(b) if the case was not conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 107 (e) of the notice of the decision of the Board not to review the case or the notice of the order of the Board determining the amount of excessive profits,

file a petition with Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding *de novo*. For the purposes of this section the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board, and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120, 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board available for that purpose, and in the case of any other witnesses shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. * * *

INTERNAL REVENUE CODE OF 1939

Section 1141. Courts of Review.

(a) Jurisdiction.—The Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of title 28 of the United States Code.

(b) Venue.—

(1) In general.—Except as provided in paragraph 2, such decisions may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia.

(2) By agreement.—Notwithstanding the provisions of paragraph 1, such decisions may be reviewed by any circuit court of appeals, or the United States Court of Appeals for the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing.

INTERNAL REVENUE CODE OF 1954

Section 7482. Courts of Review.

(a) Jurisdiction.—The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of title 28 of the United States Code.

(b) Venue.—

(1) In general.—Except as provided in paragraph (2), such decisions may be reviewed by the United States Court of Appeals for the circuit in which is located the office to which was made the return of the tax in respect of which the liability arises, or, if no return was made, then by the United States Court of Appeals for the District of Columbia.

(2) By agreement.—Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary or his delegate and the taxpayer by stipulation in writing.

OPINION

Nos. 12088, 12089

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

Marie and Alex Manoogian Fund, d/b/a Metal Parts Manufacturing Company, Appellant, v. The United States of America, Appellee.	Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

Decided May 4, 1956.

Before McAllister, Circuit Judge, and Gourley and Starr, District Judges.

Gourley, District Judge. The within appeals involving judgments entered by the United States District Court for the Eastern District of Michigan for excess profits in connection with a renegotiation proceeding were considered by this court upon oral argument on April 13, 1954. On April 28, 1954, the court entered its decision therein, in which it was stated, inter alia:

> "To resolve the issue, it must be known whether the Commissioner of Internal Revenue or the Tax Court is the administrative agency to determine whether the appellant is a charitable organization, absolved from renegotiation for excess profits.
>
> * * * * *
>
> "It seems clear that we should withhold determination of the present appeal pending further action by the Court of Appeals for the District of

Columbia and any consequent proceedings in the tax court.

* * * * *

"Jurisdiction of the present appeal will be retained until the conclusion of the proceedings under the Renegotiation Act. After which event, the court will entertain an application for further consideration of the issues presented in the within appeal." *Marie and Alex Manoogian Fund v. United States*, 212 F. (2d) 369 (6 Cir.).

The proceeding then pending in the Court of Appeals for the District of Columbia involved an appeal from the Tax Court order of December 11, 1953, which held to the view that the Tax Court is the proper administrative agency to determine whether appellant is a charitable organization absolved from renegotiation for excess profits rather than the Commissioner of Internal Revenue. By order of October 1, 1954, the Court of Appeals for the District of Columbia dismissed appellant's appeal, and thereby affirmed the Tax Court's holding.

Accordingly, appellant proceeded to secure an adjudication before the Tax Court of the United States on the merits. By opinion and order of July 17, 1955, that Court ruled:

1. That petitioner had failed to establish that during the fiscal periods in question it was exempt from renegotiation within the purview of Section 403(i)(1)(d) of the Renegotiation Act of 1943.

2. That the Tax Court has exclusive jurisdiction in determining whether the contracts in question are subject to the Act.

3. That appellant has failed to establish that it is an organization exempt under Section 101(6) of the Internal

Revenue Code of 1939. *Marie and Alex Manoogian Fund v. United States,* filed June 17, 1955, 24 Tax Court No. 46.

In its opinion, the Tax Court stated that the question whether an organization is exempt from renegotiation, as a charitable organization, presents a question of ultimate fact, or, at least, a mixed question of law and fact; that, to be entitled to such exemption under the Renegotiation Act of 1943, an organization had the burden of establishing that it was both organized and operated exclusively for one of the purposes specified in the statute; that the decision whether it was so operated is to be determined from the facts and circumstances in each particular case; that appellant had offered no evidence covering its operations; that it was impossible to determine from the evidence whether appellant was both organized and operated exclusively for the purposes specified in the statute, and, therefore, not subject to renegotiation; that it had failed to establish that it was an organization exempt under the provisions of the statute, and that, accordingly, its excessive profits amounted to the sum found in the court's finding of fact. Under Title 50 U. S. C. A. App., Section 1191 (e)(1), the Tax Court has exclusive jurisdiction to finally determine the amount of excessive profits received by a contractor such as appellant in this case.

If the foregoing were all that was before us, we could, without more, proceed to affirm the judgments of the District Court for the Eastern District of Michigan for excessive profits—which have been held in abeyance, on appeal, by virtue of our prior opinion. For the Tax Court has been found, by the judgment of the Court of Appeals for the District of Columbia, to be the proper agency to determine whether appellant was a charitable organization absolved from renegotiation for excessive profits. And

the Tax Court has found that appellant was not exempt from renegotiation, and that its excessive profits were as stated in the Tax Court's findings of fact.

Appellant, however, has filed a petition to review, before this court, the decision of the Tax Court which held that the contracts of appellant were not absolved from renegotiation for excessive profits.

After the filing of appellant's petition to review the decision of the Tax Court, the United States of America, appellee, filed a motion to docket and dismiss the petition filed by appellant, on the ground, among others, of improper venue.

We must first consider the petition for review of the Tax Court's decision before proceeding to a determination of the appeal from the judgment of the District Court for the Eastern District of Michigan, as we outlined in our prior opinion, *Marie and Alex Manoogian Fund v. United States,* 212 F. (2d) 369.

Title 50 U. S. C. A. App., Section 1191(e)(1), provides that the Tax Court "shall have exclusive jurisdiction . . . to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor"; and it also provides that "such determination shall not be reviewed or redetermined by any court or agency."

Is the decision of the Tax Court that appellant was not exempt from renegotiation reviewable in this court? The crucial issue in this case, as we see it, is whether venue in the instant petition for review of the decision of the Tax Court lies in this court or in the Court of Appeals for the District of Columbia.

Section 1141(a) of the Internal Revenue Code of 1939 provides that the circuit courts of appeals and the United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review the decisions of the Tax Court, with certain exceptions not here relevant; "and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari," in the manner provided by law. Section 1141(b) provides:

> "Venue
>
> "(1) In general. Except as provided in paragraph 2, such decisions may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia.
>
> "(2) By agreement. Notwithstanding the provisions of paragraph 1, such decisions may be reviewed by any circuit court of appeals, or the United States Court of Appeals for the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing."

In this case, no "liability arises" in respect to any "return." No "collector," no "Commissioner," and no "taxpayer," as such, is party to the proceeding; and no return has ever been made in this case. Under Section 1141(b)(1), in a case where no return is made, the decision of the Tax Court is only reviewable by the United States Court of Appeals for the District of Columbia. "The language of section 1141 plainly requires the conclusion that where review of Tax Court decisions in renegotiation cases is permissible, venue for such review is in the Court of Appeals for the District of Columbia." *Ebco*

Manufacturing Co. v. Secretary of Commerce, 221 F. (2d) 902, 904 (C. A. 6). "We find no law which fixes venue for this proceeding in this court," ibid.

From the foregoing, it is evident that the decision of the Tax Court was not the kind of determination that is reviewable in this court. But, if it were, it is difficult to see how, in any event, it could be set aside or reversed. In the Tax Court's decision, it is stated that appellant in that proceeding had bottomed its case solely on the ground of jurisdiction. Appellant in the Tax Court stressed that the Commissioner of Internal Revenue had previously held that it was exempt from renegotiation under Section 101 (6) of the Internal Revenue Code, and that the Commissioner's holding on this subject was conclusive. It further contended that, accordingly, the Tax Court lacked jurisdiction to determine whether or not it was an exempt organization within the purview of Section 403(i)(1)(D) and (i) (2) of the Renegotiation Act of 1943. The basis of the contention that the Tax Court lacked jurisdiction to determine whether or not appellant was an organization exempt from renegotation under the above statute was that Congress had not granted to the Renegotiation Board,[1] in the first instance, power to interpret and apply the exemptions from renegotiation, and that the Tax Court had no greater power or authority than the Renegotiation Board to determine the exempt status of an organization under the Renegotiation Act.[2] Appellant con-

---

[1] Section 403(i) (1) (D) and (i) (2), pertinent here, read as follows: "Sec. 403(i) (1) The provisions of this section shall not apply to—

* * * * *

"(D) any contract or subcontract with an organization exempt from taxation under section 101(6) of the Internal Revenue Code; or

* * * * *

"(2) The Board is authorized by regulation to interpret and apply the exemptions provided for in paragraph (1) (A), (B), (C), (E), and (F) and interpret and apply the definition contained in subsection (a) (7)."

[2] However, a proceeding before the Tax Court to finally determine excessive profits is not a proceeding to review the determination of the Board, but is a proceeding *de novo*. Section 403(e) (1).

tends that because of the omission of Congress to grant the Renegotiation Board the authority to interpret and apply such exemptions, it was the legislative intent to confer exclusive authority upon the Commissioner of Internal Revenue to interpret and apply the exemptions, although no provisions of the Act specifically conferred any authority upon the Commissioner of Internal Revenue. However, as the Tax Court said in its opinion in the instant case, Section 101(6) of the Internal Revenue Code had been in existence for many years; Congress was well aware that the statute and Treasury Regulations applicable thereto had been construed and applied by the federal courts, including the Supreme Court; and, under such circumstances, it was unnecessary to authorize the Renegotiation Board to make new regulations interpreting and applying the exemptions of organizations from renegotiation. The Commissioner's determination on exemptions was not conclusive. The Tax Court had jurisdiction to decide that the contracts of appellant were subject to renegotiation. *Macauley v. Waterman S. S. Corp.*, 327 U. S. 540, 544. Appellant solely relied upon the jurisdictional issue before the Tax Court; and the determination of that court, after deciding that it had jurisdiction, was based upon the failure of appellant to submit any evidence that it was organized and operated exclusively for one of the purposes specified in the statute. The Tax Court found as a fact the amount of excessive profits received by appellant, the appellant conceding that if its contracts were subject to renegotiation, it realized the excessive profits as found. But, in view of our decision, it is unnecessary for this court to pass upon the legal questions that were considered and determined by the Tax Court, or to review its findings of fact.

Our determination rests upon venue: Venue for review of the Tax Court's decision in the instant case is not, as heretofore stated, in this court, but in the United States Court of Appeals for the District of Columbia.

In accordance with the foregoing, the government's motion to docket and dismiss appellant's petition for review of the decision of the Tax Court is granted; and the judgments of the district court are affirmed.

ORDER AMENDING OPINION

(Filed July 23, 1956)

Before McAllister, Circuit Judge, and Gourley and Starr, District Judges.

The above causes coming on to be heard on appellant's petition for rehearing, and the court being duly advised,

Now, therefore, it is hereby ordered as follows:

On line 12 of page 2 of the printed opinion in the above case, the following sentence is stricken:

> "By order of October 1, 1954, the Court of Appeals for the District of Columbia dismissed appellant's appeal, and thereby affirmed the Tax Court's holding."

In place of the above sentence, the following is inserted:

> "While the District of Columbia appeal was pending, Congressional action restored jurisdiction to the Tax Court of appellant's cases (68 Stat. 1118), and the then pending appeal to the Court of Appeals for the District of Columbia was terminated when that court, on October 1, 1954, granted the government's motion to dismiss. The granting of this motion, together with the above mentioned Act

of Congress, restored jurisdiction of appellant's appeals from the original order of the War Contracts Price Adjustment Board holding that appellant had realized excessive profits, to the Tax Court."

On page 3 of the printed opinion, commencing on line 7, the following is stricken:

"If the foregoing were all that was before us, we could, without more, proceed to affirm the judgments of the District Court for the Eastern District of Michigan for excessive profits—which have been held in abeyance, on appeal, by virtue of our prior opinion. For the Tax Court has been found, by the judgment of the Court of Appeals for the District of Columbia, to be the proper agency to determine whether appellant was a charitable organization absolved from renegotiation for excessive profits. And"

The word, "the," following the above omission, should be capitalized.

In the first line of the second full paragraph on page 3 of the printed opinion, the word, "however," is stricken.

Approved for entry:

/s/ Thomas F. McAllister

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 504

MARIE AND ALEX MANOOGIAN FUND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 5–13) is reported at 24 T. C. 412. The opinion of the Court of Appeals for the Sixth Circuit, filed May 4, 1956 and amended by order filed July 23, 1956 (Pet. App. 6a–14a), is reported at 232 F. 2d 758.

JURISDICTION

The judgment of the Court of Appeals was entered May 4, 1956 (R. 48) and petitioner's petition for rehearing was denied July 23, 1956 (R. 77). Petitioner's motion for reconsideration of the petition for rehearing was denied September 7, 1956 (R. 88). The petition for a writ of certiorari was filed on October 11, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the court below properly held that venue for review of a redetermination by the Tax Court of petitioner's liability for excessive profits under the Renegotiation Act of 1943 lies only in the Court of Appeals for the District of Columbia Circuit.

STATUTES INVOLVED

The pertinent provisions of the Renegotiation Act of 1943, as amended, of the Internal Revenue Codes of 1939 and 1954, of the Renegotiation Act of 1951, and of the Renegotiation Amendments Act of 1956 are set forth in the appendix to the petition at pp. 1a–5a.

STATEMENT

On August 6, 1948, the War Contracts Price Adjustment Board determined, pursuant to Section 403 (c) (1) of the Renegotiation Act of 1943 (50 U. S. C. App. 1191 (c) (1)), that petitioner has received excessive profits in the amount of $175,000 for its fiscal year ended December 31, 1944, and $50,000 for its fiscal year ended December 31, 1945 (R. 7). Petitioner sought review of these determinations in the Tax Court under Section 403 (e) (1) of the 1943 Act (50 U. S. C. App. 1191 (e) (1)) (R. 5), and the Tax Court on June 17, 1955, found that petitioner had received excessive profits in the amounts determined by the Board (R. 14–15). Petitioner thereupon petitioned the Court of Appeals for the Sixth Circuit for review of the Tax Court redetermination (R. 16, 18). The Government filed a motion to docket and dismiss the petition for lack of venue (R. 22).

The Court of Appeals granted the Government's motion, noting that Section 1141 (b) of the Internal Revenue Code of 1939 provided that decisions of the Tax Court were reviewable by the Court of Appeals "for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia." (Pet. App. 10a.)[1] Pointing out that this case involved no "return" in respect of which "liability arises," the court quoted from its previous decision in *Ebco Manufacturing Co.* v. *Secretary of Commerce,* 221 F. 2d 902, 904, and held that "the language of Section 1141 plainly requires the conclusion that where review of Tax Court decisions in renegotiation cases is permissible, venue for such review is in the Court of Appeals for the District of Columbia" (Pet. App. 10a). Accordingly, the court dismissed the petition for want of venue (Pet. App. 13a).

ARGUMENT

The decision of the Sixth Circuit, that venue to review the Tax Court's redetermination of petitioner's excessive profits under the Renegotiation Act of 1943 lies only in the Court of Appeals for the District of Columbia Cir-

[1] At the same time, the Court of Appeals affirmed the decisions of the United States District Court for the Eastern District of Michigan, awarding judgment to the United States in collection actions based upon these determinations of excessive profits (Pet. App. 11a–13a). The July 23 amendment of the original opinion related solely to this phase of the litigation. See Pet. App. 13a–14a. There is no issue here as to the propriety of this affirmance.

cuit, properly interprets the review provisions of the Internal Revenue Code, is fully in accord with other decisions on this point, and does not conflict with *United States* v. *California Eastern Line, Inc.*, 348 U. S. 351. Moreover, the Renegotiation Amendments Act of 1956 does not affect this conclusion. Accordingly, there is no warrant for review by this Court.

1. (*a*) The decision below correctly construed the review provisions of the Internal Revenue Code as restricting venue to review the Tax Court's redetermination of petitioner's excessive profits to the Court of Appeals for the District of Columbia Circuit. Absent some special statutory provision, the normal forum for review of the actions of administrative agencies whose headquarters are in Washington is the District of Columbia.[2] *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. 2d 97 (C. A. 5); *Olin Industries* v. *National Labor Relations Board*, 72 F. Supp. 225 (D. Mass.); cf. *Blackmar* v. *Guerre*, 342 U. S. 512; *Isthmian S. S. Co.* v. *LeBaron*, 72 F. Supp. 223 (S. D. N. Y.). Venue in the courts of appeals other than the District of Columbia Circuit, if intended, is always explicitly provided for by statute (see *e. g.*, Sec. 10 (f) of the National Labor Relations Act of 1935, as amended, 29 U. S. C. 160 (f);

[2] "The principal office of the Tax Court shall be in the District of Columbia * * *." Section 1104 of the Internal Revenue Code of 1939. Since the proceedings in the Tax Court commenced prior to the enactment of the Internal Revenue Code of 1954, the court below based its decision upon the provisions of the 1939 Code. However, there is no substantial difference in the provisions of the two Codes insofar as they relate to the present case.

Sec. 9 (a) of the Securities Act of 1933, as amended, 15 U. S. C. 77i (a)) and alternative venue is frequently provided in the District of Columbia Circuit. Consequently, when the special statutory conditions for venue in the other Courts of Appeals are not met, it is only in the District of Columbia that the action may be brought. See *Bradley Lumber Co.* v. *National Labor Relations Board, supra; Blackmar* v. *Guerre, supra.*

In the present case, the requirements for seeking review in a Court of Appeals other than the Court of Appeals for the District of Columbia Circuit have not been satisfied. Since the basis for appellate review of a Tax Court renegotiation redetermination under the 1943 Renegotiation Act is the general review provision of Section 1141 (a) of the Internal Revenue Code of 1939[3] (see *United States* v. *California Eastern Line,* 348 U. S. 351, 353–354), the applicable venue provisions are those contained in Section 1141 (b) of the Code which lays venue in the Court of Appeals "in which is located the collector's office to which was made the return of the tax in respect of which the liability arises, or, if no return was made, then in the United States Court of Appeals for the District of Columbia," or in any Court of Appeals "which may be designated by the Commission and the taxpayer by stipulation in writing." The provisions of this section fixing venue in Courts of Appeals other than that of the District

[3] Section 1141 of the Internal Revenue Code of 1939 was reenacted with no material change as Section 7482 of the Internal Revenue Code of 1954.

of Columbia Circuit "were obviously tailored to fit tax cases, not renegotiation cases." *Ebco Manufacturing Co.* v. *Secretary of Commerce*, 221 F. 2d 902, 904 (C. A. 6). As the opinion below recognized (Pet. App. 10a), in this case, as in all renegotiation cases, "no 'liability arises' in respect to any 'return'. No 'collector,' no 'Commissioner,' and no 'taxpayer,' as such, is party to the proceeding; and no return has ever been made in this case."

Since the special venue provisions of the Code are thus clearly inapplicable, the terms of Section 1141 (b) place venue for review of Tax Court renegotiation determinations under the 1943 Act in the District of Columbia Circuit alone. Section 1141 (b) expressly recognizes the residual quality of District of Columbia venue, and the fact that the instant case is a renegotiation proceeding renders it impossible for petitioner to make the necessary allegations to satisfy the statutory requirements for venue elsewhere. Accordingly, the holding below, that venue to review the Tax Court's redetermination of petitioner's excessive profits lies only in the District of Columbia Circuit, is correct.

(*b*) This ruling is in accord with the other appellate decision on the point. The Court of Appeals for the Ninth Circuit concluded in *French* v. *War Contracts Price Adjustment Board,* 182 F. 2d 560 (C. A. 9), that Section 1141 (b) did not fix venue to review Tax Court renegotiation determinations in that court. See also *Warner* v. *War Contracts Price Adjustment Board,* 188 F. 2d 363 (C. A. 9), decided on the basis of the *French* opinion. The same result

was reached by the Sixth Circuit in *Ebco Manufacturing Co.* v. *Secretary of Commerce*, 221 F. 2d 902, where the court also dismissed a petition for review of a Tax Court renegotiation determination on the ground of improper venue, stating (221 F. 2d at 904):

> The language of Section 1141 plainly requires the conclusion that where review of Tax Court decisions in renegotiation cases is permissible, venue for such review is in the Court of Appeals for the District of Columbia.[4]

(*c*) This result in no way conflicts with the decision of this Court in *United States* v. *California Eastern Line*, 348 U. S. 351.[5] That case involved the question

[4] We have difficulty in seeing the basis of petitioner's claim that the rule as formulated in these cases is not clear (Pet. p. 8). With the sole exception of the three cases cited in the text and the instant case, all petitions for review of Tax Court determinations in renegotiation cases have been filed in the District of Columbia Circuit, and as is shown in the text, in the four cases where review was sought elsewhere, the courts have uniformly held that venue lies only in the District of Columbia Circuit. In this connection, it is noteworthy that the Department of Justice files contain correspondence showing that in *Ebco* the contractor had originally intended to seek review in the District of Columbia Circuit, and ultimately filed in the Sixth Circuit to avoid, if possible, a then controlling decision of the District of Columbia Circuit.

As far as the present case is concerned, petitioner had no cause for confusion since the *Ebco* decision was issued and reported before the instant petition for review was filed with the Sixth Circuit.

[5] It may be noted that in *California Eastern* this Court had before it for review the decision of the District of Columbia Circuit, reported at 211 F. 2d 635, not that court's earlier decision reported at 204 F. 2d 398, as asserted by petitioner (Pet. 5). In any case, neither the 211 F. 2d decision nor the 204 F. 2d decision involved an issue of venue.

whether Tax Court determinations on the renegotiability of contracts were open to appellate review. In passing on this jurisdictional issue, this Court held that there was a "permissible basis" for appellate review of such Tax Court determinations. Since the issue before the Court was solely one of jurisdiction and indeed the case arose in the District of Columbia Circuit, the distinctly different question of venue was neither raised nor passed upon by the court.

2. The decision below is not affected by the Renegotiation Amendments Act of 1956, 70 Stat. 786. Section 12 of this statute, upon which petitioner relies, inserts a new section 108A in the Renegotiation Act of 1951 (50 U. S. C. App. 1218) to provide (Pet. p. 9, 70 Stat. 791):

> A decision of the Tax Court of the United States under section 108 of this Act may, to the extent subject to review, be reviewed by—
>
> (1) the United States Court of Appeals for the circuit in which is located the office to which the contractor or subcontractor made his Federal income-tax return for the taxable year which corresponds to the fiscal year with respect to which such decision of the Tax Court was made, or if no such return was made for such taxable year, then by the United States Court of Appeals for the District of Columbia * * *.

This statute on its face applies only to Tax Court renegotiation determinations under the 1951 Act, not those rendered under the 1943 Act, and in any event cannot be applied retroactively to the instant case.

(*a*) The present case, involving renegotiation of petitioner's excessive profits for its fiscal years ended

December 31, 1944, and December 31, 1945 (R. 16, 18), concededly arose under the 1943 Renegotiation Act (see e. g., Pet. 2, 3), and not the 1951 Act. The 1943 and the 1951 Renegotiation Acts are separate statutes, each dealing with renegotiation for different years and each still in full force and effect with respect to excessive profits earned during their respective periods of coverage.[6] The 1943 Act provides for Tax Court review of renegotiation determinations in Section 403 (e) (1) (50 U. S. C. App. 1191 (e) (1)), while the 1951 Act contains its own separate provision for such review in Section 108 (50 U. S. C. App. 1218).

It is clear that the 1956 Renegotiation Amendments Act amends only the Renegotiation Act of 1951. The statute is subtitled "An Act to extend and amend the Renegotiation Act of 1951" (70 Stat. 786). And Section 12, the provision here pertinent, adds a new section "Sec. 108A" following Section 108 and in express terms applies only to "A decision of the Tax Court of the United States under Section 108 of this Act * * *." 70 Stat. 791. Since both the decisions

[6] The 1943 Renegotiation Act, by its terms, is applicable to a contractor's fiscal years ended after June 30, 1943 (Section 403 (c) (6), 50 U. S. C. App. 1191 (c) (6)), and continued to apply to income received by a contractor to and including December 31, 1945 (Section 403 (h), 50 U. S. C. App. 1191 (h)). The 1943 Act as supplemented, but not repealed, by the Renegotiation Act of 1948 (50 U. S. C. App. 1193), which applied to income received by war contractors from May 21, 1948, the date of its enactment, to and including December 30, 1950. The Renegotiation Act of 1951 (50 U. S. C. App. 1211, *et seq.*) was enacted March 23, 1951. That statute applied to income received by war contractors subsequent to January 1, 1951. Section 201 (i), 50 U. S. C. App. 1231 (i) specifically provided that the 1951 statute did not repeal the 1943 Act.

of the Tax Court and the Court of Appeals on review in the present case were made pursuant to the provisions of Section 403 of the Renegotiation Act of 1943 (R. 5, Pet. App. 11a), these decisions are not affected by the 1956 amendment to the Renegotiation Act of 1951

(*b*) Moreover, even if the 1956 amendment has in some way altered the 1943 Act, there is no basis for affording this amendment the retroactive application necesary to encompass the instant case. Section 12 of the 1956 Act itself makes no provision for retroactive application of the new Section 108A. In contrast, Congress specifically provided an effective date of various of the amendments in other sections of the 1956 Act (see Sections 3 (b), 5 (d), 7 (b), 8 (b), 9 (c), 70 Stat. 787, 788, 789, 791), and in Section 11 (b) expressly made the provisions of Section 11 (a) retroactive to the date of enactment of the Renegotiation Act of 1951. 70 Stat. 791. The lack of such a provision with respect to Section 12, the section adding Section 108A to the 1951 Act, demonstrates that Congress did not intend that this Section be given retroactive effect. And it is well established that a statute is never to be construed as retrospective "if it can reasonably be avoided. The presumption, until rebutted, is the other way." *United States* v. *Moore,* 95 U. S. 760, 762. See, e. g., *Brewster* v. *Gage,* 280 U. S. 327; *United States* v. *Magnolia Petroleum Co.,* 276 U. S. 160. This rule applies to procedural as well as substantive statutes. *United States* v. *St. Louis, S. F. & T. Ry. Co.,* 270 U. S. 1; *Fullerton-Krueger Lumber Co.* v. *Northern*

Pacific Ry. Co., 266 U. S. 435; *U. S. Fidelity Guaranty Co.* v. *United States*, 290 U. S. 306.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1956.

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